IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

THURSDAY, THE 19TH JULY 2007 / 28TH ASHADHA 1929

WP(C).No. 6678 of 2007(T)

PETITIONER:

C.R. SUDHEESH RAJ, THARAYIL PARAMBU,
PANAYAPPILLY, KOCHI.

BY ADV. SRI.P.N.MOHANAN

RESPONDENTS:

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1. ASST. REGISTRAR OF CO-OP. SOCIETIES,
(GENERAL), KOCHI.

2. GENERAL MANAGER, MATTANCHERRY
SARVAJANIC CO-OP.BANK LTD.NO.3284,
P.B.NO.142, CHERLAI, KOCHI.

BY ADV. SRI.T.A.RAJAN, SC
SRI.C.K.JAYAKUMAR
GOVERNMENT PLEADER SMT. ANU SIVARAMAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 6678 of 2007

APPENDIX

PETITIONER'S EXHIBITS

EXT-P1: TRUE COPY OF THE SALE NOTICE DATED 24.7.2006 ISSUED BY THE AUTHORISED OFFICER

EXT-P2: TRUE COPY OF THE RECEIPT ISSUED BY THE 2ND RESPONDENT DATED 29.8.2006

EXT-P3: TRUE COPY OF THE REPRESENTATION DATED 22.12.2006 SUBMITTED TO THE 2ND RESPONDENT

EXT-P4: TRUE COPY OF THE REPRESENTATION SUBMITTED TO THE 1ST RESPONDENT DATED 12.2.2007

EXT-P5: TRUE COPY OF THE LETTER DATED 4.1.2006 ISSUED ON 4.2.2006 SENT BY 2ND RESPONDENT TO THE PETITIONER

EXT-P6: TRUE COPY OF THE SALE NOTICE ISSUED BY THE 2ND RESPONDENT

/TRUE COPY/

K.M. JOSEPH,J.

W.P (C) No.6678 of 2007

Dated this the 19th day of July, 2007

J U D G M E N T

The petitioner has approached this court seeking a direction to the respondents to confirm the sale as per Ext.P1 notification and to accept the quotation submitted by the petitioner and transfer the property of 2.406 cents in Sy. No.1402/1 of Rameswaram village to the petitioner forthwith. There is also a prayer to quash Exhibits P5 and P6. The case of the petitioner in brief is as follows:

2. The 2nd respondent invited tenders for the sale of 2.406 cents of land by Exhibit-P1 notice dated 24.7.2006. Exhibit-P2 is a receipt of the petitioner having participated in the tender and depositing Rs.5,000/-. He was the only tenderer and he quoted the maximum amount. The authorised officer after offering tender confirmed the sale in favour of the petitioner for Rs. 4.11 lakhs. The petitioner offered 25% of the sale price. But it was stated that the amount can be collected only after the decision of the Board of Directors. The petitioner made enquiry. The 2nd respondent directed the petitioner to wait for a few days. It is his case that he sold his residential

property to another person for Rs. 6 lakhs for the purpose of depositing the amount. Now the petitioner has no property in his possession. He made Ext.P3 request on 22.12.2006 and he was asked to wait for few days. Thereafter, the petitioner made Exhibit-P4 representation. No decision was taken till Ext.P5 letter dated 4.1.2006 served on the petitioner. By Exhibit-P5 letter the 2nd respondent informed the petitioner that they are not interested in confirming the sale. The 2nd respondent issued sale notice inviting quotations on or before 28.2.2007.

3. In the counter affidavit filed by the 2nd respondent, it is interalia, stated as follows:

4. The amount due to the Bank was Rs. 10,41,516/- as on 31.7.2006 and the reserve price fixed for the property in Ext.P1 sale notice was Rs.8,10,000/-. The petitioner, however, submitted a tender offering an amount of Rs. 4,11,000/-. It is further submitted that even though the petitioner has offered an amount of Rs. 4,11,000/- he will give only Rs. 2,01,000/- to the bank and the balance amount of Rs.2,10,000/- is to be given to the three tenants in the building. As the amount offered by the petitioner was very low, the sale was not confirmed and it was

decided to get necessary advice. There is a denial of allegation, the petitioner had sold his property for depositing the amount to another person. In Exhibit-P1 it is stated that the authorised officer is not bound to accept the highest offer or any or all offers.

5. Sri. P.N. Mohanan, learned counsel for the petitioner would submit that the petitioner was the only participant in the tender and he sold his only property on the basis of the understanding that the sale would be confirmed in his name. Learned counsel appearing for the Bank reiterates the contentions in the counter affidavit.

6 What the petitioner seeks a writ of mandamus for confirmation of sale. A writ of mandamus has to be based on the existence of a legal right. The question arises whether the petitioner has a legal right to the sale being confirmed. Undoubtedly, Exhibit-P1 notification provides that the Bank is not obliged to accept the highest offer or any offer. In such circumstances, it may be difficult for the petitioner to establish that he has a legal right to have the sale confirmed. The amount due to the Bank was more than Rs. 10 lakhs. The

reserve price fixed for the property was Rs.8,10,000/-. The offer of the petitioner is just about half of the reserve price. Therefore, it cannot be said that Ext.P5 decision of the Bank not to confirm the sale is not a bona fide one and against the interest of the Bank. The petitioner does not have a right to the property till it is confirmed. The confirmation is to be done by the Board of Directors. Admittedly the Board of Directors have not confirmed the sale. It may be true that the petitioner has sold his property for raising the fund to deposit the amount.

Having regard to the totality of the facts of the case, I do not think that the petitioner has established a case under Article 226 of the Constitution of India for a direction to confirm the sale of the property for Rs.4,11,000/- when the reserve price itself is Rs.8,10,000/-. The amount due to the Bank is more than Rs.10 lakhs as on 2006. In such circumstances, the writ petition fails and it is dismissed.

(K.M. JOSEPH,JUDGE)

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K.THANKAPPAN,J

CRL.A. NO.92 OF 1999

ORDER

25th May, 2007